

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1233 OF 2007
IN
APPEAL NO. 806 OF 2006
IN
SUIT NO.2208 OF 1987

Lachmandas Bhojraj Makhija & Anr. .. Applicants
versus
Ms.Janki Bhojraj Makhija & ors. .. Respondents

Mr.H.K. Vazirani for the applicants.
Mr.Rakesh Dave i/b N.N.Vaishnawa & Co. for
respondent no.1.

CORAM : R.M.S. KHANDEPARKAR
AND D.G.KARNIK, JJ

DATED : 15th June 2007.

P.C.:

1. Heard.

2. By the present notice of motion, the applicant is seeking stay of the execution of the judgement and decree dated 4th October 2006 which has been assailed in Appeal no.806 of 2006. It is pertinent to note that at the time of the filing of the appeal, the applicant had moved notice of motion no.3841 of 2006 which was disposed of by this court while admitting the appeal on 15th November 2006 with

the following order :-

Heard.

The interim order that was operative during the pendency of the suit shall continue to remain operative until disposal of the appeal." Notice of Motion stands disposed of."

Upon reading of the said order dated 15th November 2006 therefore disclose that the notice of motion which was taken out earlier for stay of the execution of the impugned order and decree dated 4th October 2006 was disposed of by giving limited relief in the order stated above and stay of the execution of the decree was specifically refused. It is to be noted that under the decree various reliefs are granted whereas the impugned order which was granted during the pendency of the suit was of limited nature. i.e. in the form of appointment of receiver, while the suit referred to various other properties also. Once the applicant had not been able to secure the stay of the execution of the impugned order while disposing of the notice of motion no.3841 of 2006, the applicant is not entitled to take out fresh notice of motion unless the applicant makes out a case in the

change in circumstances. The affidavit in support of the notice of motion today does not disclose any change in circumstances.

3. It was sought to be argued on behalf of the applicant that presently there is a threat of execution of the decree which threat was not given at the time when notice of motion no.3841 of 2006 was disposed of. Once the respondent was armed with the decree with effect from 4th October 2006, it cannot be presumed that the respondent was not entitled to seek execution of the decree on 15th November 2006 and that the respondent is entitled to the decree. In fact, the moment the judgement is passed under Order 20 Rule 6A of the Code of Civil Procedure, the judgement itself can be sought to be executed as a decree. Being so, there is absolutely no change in circumstances which would warrant any interference in the order dated 15th November 2006.

4. For the reasons stated above, therefore since no case is made out for the grant of any relief, notice of motion is dismissed with no order as to costs.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)